

ORIGINAL

ORIGINAL
FILE

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In Re Applications of

ROBERT B. TAYLOR

For Renewal of License for
Station WTRU (FM)
Jupiter, Florida

JUPITER BROADCASTING
CORPORATION

For Construction Permit for a
New FM Station in Jupiter, Florida

To: Honorable Walter C. Miller
Administrative Law Judge

MM Docket No. 92-114

File No. BRH-80926UJ

File No. BPH-890103MD

RECEIVED

'AUG 25 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**TAYLOR OPPOSITION TO THIRD PETITION
TO ENLARGE ISSUES**

Robert B. Taylor, by counsel, hereby opposes the Third Petition to
Enlarge Issues filed by Jupiter Broadcasting Corporation ("JBC") on August 12, 1992.

In support of the opposition, it is stated as follows:

JBC requests the addition of a disqualifying Rule 73.3613 (Filing of Contracts)
issue against Taylor based on the fact that two management contracts with Ramon
Hernandez, and one contract with Jaime Garza were not filed with the Commission.
The first contract with Ramon Hernandez is dated January 3, 1991; the second contract
is dated April 17, 1991. The Garza contract is dated June 26, 1991.

No. of Copies rec'd
List A B C D E

0+6

The JBC Petition is Late-Filed

JBC states that it employed International Transcription Services in July, 1992 to obtain a certified copy of the WTRU(FM) ownership file and did not find copies of Mr. Taylor's agreements with Ramon Hernandez and Jaime Garza. The requested issue is based on the unavailability of the agreements in the WTRU(FM) ownership file located in the Commission's Ownership Section.

JBC had copies of the two Hernandez agreements in May, 1992 or earlier. Copies of the two agreements were attached by JBC as part of Exhibit No. 18 to its First Petition To Enlarge Issues Against Robert B. Taylor which was filed by JBC on May 22, 1992. Since JBC had two of the three agreements in May, it could reasonably have had the ownership file checked in May and did not have to wait until July. The petition is not based on deposition testimony; JBC does not claim that the agreements were just discovered. The petition is untimely.

The JBC Petition Does Not Raise A Question
Of Probable Decisional Significance or One
Of Substantial Public Interest Importance

JBC seeks the Rule 73.3613 issue because the management agreements were not filed under Rule 73.3613. It further argues that Taylor had a motive to conceal the agreements because they affect the credibility of his integration claim in that they "are evidence of abdication of control over the day-to-day operations of WTRU". As far as the JBC comments about abdication of control are concerned, they are best described as unsupported adversarial exaggerations.

JBC refers to the duties of Mr. Garza set forth in his agreement but does not refer to the language concerning Mr. Taylor's responsibilities. JBC cites to the fact that under the agreement Mr. Garza hires and pays station personnel but ignores the fact that all three of the agreements specify that Mr. Taylor is responsible for maintaining broadcast studios and transmitting equipment and for paying the cost of real property taxes and personal property taxes, ASCAP/BMI fees, basic telephone service, electricity, insurance coverages, and payment of mortgages.

Further, JBC ignores the fact that all three of the contracts specifically state, in paragraph 8, that the operation and programming of WTRU will remain under the control of Mr. Taylor at all times. All of the contracts contain language that requires a minimum of three PSAs per day and the broadcast of interviews with community leaders. The Garza contract is for no specific term and is terminable at will.

Paragraph 8 of the Garza agreement states: "The operation and programming of WTRU will remain under the control of the FCC licensee, Mr. Taylor, at all times". Jaime Garza was deposed on August 17, 1992 and made it clear that he manages under the overall supervision of Mr. Taylor.

In claiming that the motive to conceal the agreements relates to their impact on Taylor's integration, JBC disregards the fact that Mr. Taylor has claimed only part-time integration and has not claimed that he will be the full-time manager of the station. Taylor's Integration Statement stated that Mr. Taylor is the Business Manager of the station.

The Taylor integration exhibit (Exhibit No. 2) sets forth the following integration

which is not affected by the management contracts.:

Mr. Taylor resides in Jupiter and proposes to work at the station full time each year from approximately October to May. During the summer months of July through September, Mr. Taylor moves his residence to his summer cottage in Michigan. Mr. Taylor makes at least three or four trips each summer back to his Jupiter office and stays for at least one week each trip.

...

During the six to eight months when he will be in Florida on a full-time basis, Mr. Taylor will work a minimum of approximately 25 hours per week at the Jupiter station on station business.

During the summer months when he is in Michigan, Mr. Taylor does paperwork and makes phone calls on station business. During these months, Mr Taylor works on average approximately 8 hours per week on station matters.

It should be noted that Section 73.3613 of the Rules has two provisions relating to the filing of management contracts. Section 73.6313(c)(1) requires the filing of:

(1) Management consultant agreements with independent contractors; contracts relating to the utilization in a management capacity of any person other than an officer, director, or regular employee of the licensee or permittee; station management contracts with any persons, whether or not officers, directors, or regular employees, which provide for both a percentage of profits and a sharing in losses; or any similar agreements.

Section 73.3613(c)(2) states:

(2) The following contracts, agreements, or understandings need not be filed: Agreements with persons regularly employed as general or station managers or salesmen; contracts with program managers or program personnel; contracts with attorneys, accountants or consulting radio engineers; contracts with performers; contracts with representatives; contracts with labor unions; or any similar agreements.

The operative factor that creates the difference between the two sections is whether the hired manager is an employee or an independent contractor. If Mr. Garza

was an employee, the agreement would not have to be filed.

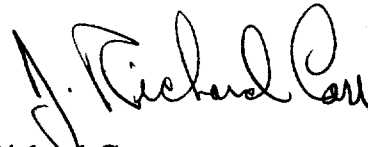
Attached hereto is a declaration under penalty of perjury of Robert B. Taylor in which he states that he had always believed that management contracts did not have to be filed. He was unaware of the distinction made between employees and independent contractors.

The fact that Mr. Taylor failed to file the agreements because he was unaware of the distinction made in the rule between employees and independent contractors does not equate to a deliberate motive to conceal the agreements. The three agreements are being filed with the Ownership Section simultaneously with the filing of this opposition. See copy of transmittal letter attached. The requested issue should not be added.

Respectfully submitted,

ROBERT B. TAYLOR

By:

A handwritten signature in cursive script, appearing to read "J. Richard Carr".

J. Richard Carr
His Attorney

August 25, 1992

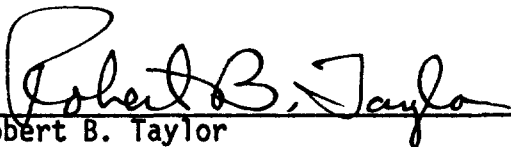
P.O. Box 70725
Chevy Chase, MD 20813-0725

DECLARATION OF ROBERT B. TAYLOR

In 1991 I entered into management contracts with two individuals, Ramon Hernandez and Jaime Garza, in reference to managing WTRU (FM), Jupiter, Florida. The first of these contracts was entered into approximately two years after the previous seven year license term ended on February 1, 1989.

On August 17, 1992, I was advised by counsel that under FCC rules, copies of these management contracts may have qualified as the type of document that was required to be filed with the Commission. If this is the case, I was certainly not aware of it last year when I entered into these management agreements. I treated these agreements as confidential employment contracts which outlined duties and compensation structure for the individual who I was appointing to be general manager of WTRU and who was being engaged to oversee day-to-day operating functions of the radio station which a general manager normally does.

To my knowledge as an FCC licensee over the years, I understood that network affiliation agreements were required to be filed with the Commission, but I never heard of any rule requiring the filing of contracts with a station's general manager.


Robert B. Taylor

Dated: AUGUST 17, 1992

J. RICHARD CARR
ATTORNEY AT LAW
P. O. BOX 70725
CHEVY CHASE, MARYLAND 20813-0725
(301) 856-7053

Admitted in D.C.
& New York

Telecopier
(301) 718-8407

August 25, 1992

Mrs. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Ms. Searcy:

Submitted herewith, on behalf of Robert B. Taylor, licensee of WTRU(FM), Jupiter, Florida and pursuant to Section 73.3613(c)(1) of the Rules, are copies of three agreements between the licensee and two independent contractors acting in a management capacity.

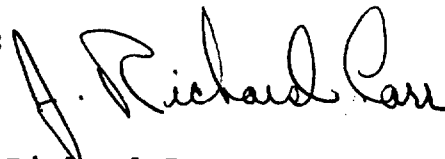
Two of the agreements Dtaed January 1991 and April 1991 are with Dr. Ramon Hernandez. The third agreement is with Mr. Jaime Garza and is dated June 1991.

These agreements should have been filed within 30 days of their execution but were not filed because the licensee believed that management contracts (even with independent contractors) did not have to be filed.

If there should be any questions in connection with this matter, please communicate with the undersigned.

Respectfully submitted,

By:



J. Richard Carr

J. RICHARD CARR
ATTORNEY AT LAW
P. O. BOX 70725
CHEVY CHASE, MARYLAND 20813-0725
(301) 656-7053

**DUPLICATE
FILE**

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FEDERAL COMMUNICATIONS COMMISSION
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If there should be any questions in connection with this matter, please communicate with the undersigned.

Respectfully submitted,

By:



J. Richard Carr

No. of Copies rec'd
List A B C D E



MANAGEMENT CONTRACT

This agreement is made between Robert B. Taylor, dba WTRU Radio Station, 99.5FM, Jupiter, Florida, and Dr. Ramon Hernandez.

Dr. Hernandez agrees to provide management services in the operation of WTRU on the following terms and conditions:

- 1) In the management of WTRU, Dr. Hernandez agrees to follow the rules and regulations of the Federal Communications Commission (FCC).
- 2) Dr. Hernandez agrees to maintain station program logs and transmitter logs as required by the FCC for WTRU.
- 3) Dr. Hernandez agrees to hire, train and manage personnel as he deems necessary to operate WTRU, and accepts full responsibility for payment of a) wages and/or talent fees to air talent personnel engaged by Dr. Hernandez, and b) wages and/or commissions paid to sales personnel engaged by Dr. Hernandez.
- 4) WTRU Radio Station equipment, furniture and fixtures must not be damaged or removed from the premises while under the management of Dr. Hernandez. Dr. Hernandez agrees to pay for any damages to WTRU equipment, furniture or fixtures, or the replacement cost of missing items if damages or losses are determined to have been caused by persons admitted to the WTRU building while under the management of Dr. Hernandez.
- 5) Long distance telephone calls and/or long distance facimile (FAX) calls billed to WTRU telephone numbers will be paid by Dr. Hernandez. Basic telephone lines and telephone service from Southern Bell will be paid for by Mr. Taylor. Dr. Hernandez agrees that personal long distance phone calls will not be made on WTRU telephone lines by Dr. Hernandez or any persons who may be admitted to the WTRU building while under the management of Dr. Hernandez.
- 6) Dr. Hernandez agrees to broadcast at least three (3) public service announcements (PSA's) per day on WTRU relating to community events and/or social services available to listeners.
- 7) Dr. Hernandez agrees to broadcast interviews from time to time with community leaders and other public figures, and to make available air time of up to thirty (30) minutes in length as often as once a week at mutually agreed times at the request of Mr. Taylor for the purpose of broadcasting on WTRU interviews with community leaders or other public affairs type programs.
- 8) Mr. Taylor retains responsibility for fulfilling all FCC rules and regulations, including periodic written FCC reports and FCC license renewals. The operation and programming of WTRU will remain under the control of the FCC licensee, Mr. Taylor, at all times.
- 9) Mr. Taylor agrees to pay for the following costs of operation of WTRU: real property taxes and personal property taxes to the county of Palm Beach, Florida; monthly music license fees to ASCAP and BMI; basic telephone service; electricity; periodic trash removal; insurance coverages as deemed necessary by Mr. Taylor; and monthly payments to cover mortgages, and/or any outstanding loans or liens on the station property and equipment.

9a) Dr. Hernandez agrees to take full responsibility for any contracts entered into and signed by him; and agrees to accept full liability for federal and Florida payroll taxes resulting from payrolls he makes to his employees; and agrees to pay vendors for merchandise or services ordered by Dr. Hernandez.

10) Fifty percent (50%) of the gross revenues produced by the sale or lease of air time on WTRU will be retained by Mr. Taylor; the other fifty percent (50%) will be paid to Dr. Hernandez. All revenues produced in either cash or check form must be deposited in the WTRU checking account at Republic Bank in Jupiter, Florida. All checks must be made payable to WTRU. A photocopy or carbon copy of each air time contract must be provided by Dr. Hernandez to Mr. Taylor or his agent. A contract must be written and submitted for every client who buys, leases or trades for air time on WTRU.

11) Usually once a week but not to exceed two times a week, Mr. Taylor or his agent will receive all incoming gross revenue payments from Dr. Hernandez, deposit them at Republic Bank, and simultaneously issue a WTRU check to Dr. Hernandez for fifty percent (50%) of the gross amount.

12) In the event that Dr. Hernandez accepts barter (trade) merchandise or services as payment for use of air time on WTRU, Dr. Hernandez agrees to pay Mr. Taylor an amount equal to fifty percent (50%) of the retail value or fair market value of the barter merchandise or services, or Mr. Taylor may elect to accept fifty percent (50%) of the trade merchandise or services.

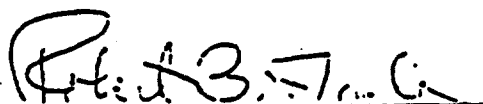
13) If Dr. Hernandez chooses to act as producer or co-producer of any promotion or event in which he has a financial interest and has the potential if successful to produce revenues and/or profits for Dr. Hernandez, and radio commercials or promotional announcements for the event are broadcast on WTRU, these announcements will be valued at eleven dollars (\$11.00) each. Dr. Hernandez agrees to pay WTRU in advance fifty percent (50%) of the value of each commercial ordered, or five dollars and fifty cents (\$5.50) each.

14) When signed by the parties, this agreement will become effective on April 20, 1991.

15) If this agreement is cancelled by either party, each party agrees to pay any monies owed to the other party at the time of cancellation. If the station fails to produce enough revenue or in the event the parties disagree on operating matters, either party may cancel this contract, but both parties agree to cooperate with each other to quietly and smoothly terminate mutual business matters within a reasonable period of time.

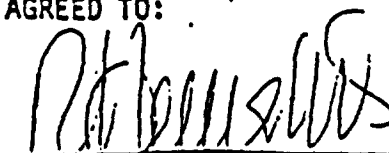
However, in the event WTRU loses its FCC license, is sold, or moves its broadcast antenna to a different location, then thirty days notice is required.

AGREED TO:


Robert B. Taylor dba WTRU

Date signed: 4-17-91

AGREED TO:


Dr. Ramon Hernandez

Date signed: 4-17-91

AIR TIME LEASE

This agreement is made between Robert B. Taylor, dba WTRU Radio Station, 99.5 FM, Jupiter, Florida (hereafter called LESSOR), and Dr. Ramon Hernandez (hereafter called LESSEE).

Lessor agrees to lease air time on WTRU to Lessee on the following terms and conditions:

- 1) Lessee agrees to follow FCC rules and regulations.
- 2) Lessee agrees to maintain station program logs and transmitter logs as required by the FCC.
- 3) Lessee accepts full responsibility for payment of a) wages and/or talent fees to air talent personnel engaged by Lessee, and b) wages and/or commissions paid to sales personnel engaged by Lessee.
- 4) Lessee agrees that Lessor's equipment, furniture and fixtures must not be damaged or removed from the premises by Lessee or Lessee's personnel. Lessee agrees to pay for any damages to Lessor's equipment, furniture and fixtures; or the replacement cost of missing items if damages or losses are determined to have been caused by Lessee or Lessee's personnel.
- 5) Lessee agrees that long distance telephone calls and/or long distance facimile (FAX) calls billed to Lessor's telephone will be paid by Lessee. Lessee agrees that personal long distance phone calls will not be made from WTRU telephones by Lessee or Lessee's personnel.
- 6) Lessee agrees to broadcast at least three (3) public service announcements (PSA's) per day relating to community events and/or activities in the station's service area.
- 7) Lessee agrees to broadcast interviews from time to time with community leaders and other public figures, and to make available air time of up to thirty (30) minutes in length as often as once a week at mutually agreed to times to Lessor for broadcast of interviews with community leaders or other public affairs or public service type broadcasts.
- 8) Lessor retains responsibility for fulfilling all FCC rules and regulations, including periodic written FCC reports and FCC license renewals. The operation and programming of WTRU will remain under the control of the Lessor at all times.

Page 2, Air Time Lease

9) Lessor agrees to maintain broadcast studios and transmitting equipment in Jupiter, Florida, for the use of Lessee.

10) Lessor agrees to pay for the following costs of the operation of WTRU: real property taxes and personal property taxes to the county of Palm Beach, Florida; monthly music license fees to ASCAP and BMI; basic telephone service; electricity; insurance coverages as deemed necessary by Lessor; and monthly payments to cover mortgages on the station property and equipment.

11) The parties agree that either party may cancel this agreement by giving thirty (30) days written notice to the other party. Cancellation reasons include if the revenues are not sufficient to meet operating costs, or for reasons related to the station's FCC license, or in the event the station is sold.

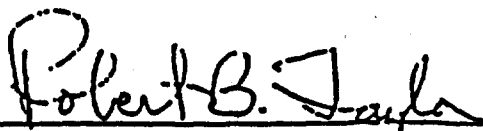
12) The parties agree that the lease payment by Lessee for the air time provided by Lessor will be fifty percent (50%) of the gross revenues produced by the use of the air time by Lessee. Gross revenue is defined as the revenue received after allowing recognized advertising agencies to deduct a standard agency commission, usually fifteen percent (15%).

13) In the event that Lessee accepts barter (trade) merchandise or services as payment for use of air time on WTRU, Lessee agrees to pay Lessor an amount equal to fifty percent (50%) of the fair market value of the barter merchandise or services, or Lessor may elect to accept fifty percent (50%) of the trade merchandise or services.

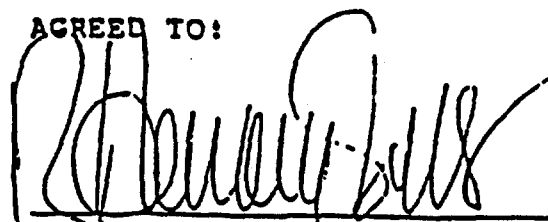
14) The parties agree that all revenues produced by the use of the air time by Lessee will be deposited in the WTRU business checking account. At regular intervals, usually once a week, fifty percent (50%) of the gross revenues collected will be delivered to Lessee, and the other fifty percent (50%) will be retained by Lessor to be applied as the regular lease payment of Lessee for the air time.

Dated: JANUARY 3, 1991

AGREED TO:


Robert B. Taylor dba WTRU

AGREED TO:


Dr. Ramon Hernandez

01-03-90 RH

MANAGEMENT CONTRACT

This agreement is made between Robert B. Taylor, dba WTRU Radio Station, 99.5 FM, Jupiter, Florida, and Jaime Garza, 18946 SE Mayo Drive, Tequesta, FL.
DBA AMIGOS LATINOS IN RADIO INC.

Mr. Garza agrees to provide management services in the operation of WTRU on the following terms and conditions:

- 1) In the management of WTRU, Mr. Garza agrees to follow the rules and regulations of the Federal Communications Commission (FCC).
- 2) Mr. Garza agrees to hire, train and manage personnel as he deems necessary to operate WTRU, and accepts full responsibility for payment of
a) wages and/or talent fees to air talent personnel engaged by Mr. Garza,
and b) wages and/or commissions paid to sales personnel engaged by Mr. Garza.
- 3) Mr. Garza agrees to maintain station program logs and transmitter logs as required by the FCC for WTRU.
- 4) WTRU radio station equipment, furniture and fixtures must not be damaged or removed from the premises while under the management of Mr. Garza. Mr. Garza agrees to pay for any damages to WTRU equipment, furniture or fixtures, or the replacement cost of missing items if damages or losses are determined to have been caused by persons admitted to the WTRU building while under the management of Mr. Garza.
- 5) Long distance telephone calls and/or long distance facimile (FAX) calls billed to WTRU telephone numbers will be paid by Mr. Garza. Basic telephone lines and telephone service from Southern Bell and AT & T will be paid for by Mr. Taylor. Mr. Garza agrees that personal long distance calls will not be made on WTRU telephone lines by Mr. Garza or any persons who may be admitted to the WTRU building while under the management of Mr. Garza.
- 6) Mr. Garza agrees to broadcast at least three (3) public service announcements (PSA's) per day on WTRU relating to community events and/or social services available to listeners.
- 7) Mr. Garza agrees to broadcast interviews from time to time with community leaders and other public figures, and to make available air time of up to thirty (30) minutes in length as often as once a week at mutually agreed times at the request of Mr. Taylor for the purpose of broadcasting interviews with community leaders or other public affairs type programs.
- 8) Mr. Taylor retains responsibility for fulfilling all FCC rules and regulations, including periodic written FCC reports and FCC license renewals. The operation and programming of WTRU will remain under the control of the FCC licensee, Mr. Taylor, at all times.
- 9) Mr. Taylor agrees to pay for the following costs of operation of WTRU: real property taxes and personal property taxes to the county of Palm Beach, Florida; monthly music license performance fees to ASCAP and BMI; basic telephone service; electricity; periodic trash removal; insurance coverages as deemed necessary by Mr. Taylor; and payments to cover mortgages and/or any outstanding loans or liens on the station property and equipment.

10) Mr. Garza agrees to take full responsibility for any contracts entered into and signed by him; agrees to accept full liability for federal and state of Florida payroll taxes resulting from payrolls he makes to his employees, and workers compensation insurance if needed for his employees; and agrees to pay vendors for any merchandise or services ordered or purchased by Mr. Garza and/or his employees.

11) Fifty percent (50%) of the gross revenues produced by the sale or lease of air time on WTRU including production services and talent fees will be retained by Mr. Taylor; the other fifty percent (50%) will be paid to Mr. Garza. All revenues produced in either cash or check form must be deposited in the WTRU checking account at Republic Bank in Jupiter, Florida. All checks must be made payable to WTRU. A photocopy or carbon copy of each air time contract must be provided by Mr. Garza to Mr. Taylor or his agent. A contract must be written and submitted for every client who buys, leases or trades for air time or talent or production services at WTRU.

12) Usually once a week but not to exceed two times a week, Mr. Taylor or his agent will receive all incoming gross revenues (cash and checks) from Mr. Garza, deposit them at Republic Bank, and issue a WTRU check to Mr. Garza for fifty percent (50%) of the gross amount collected.

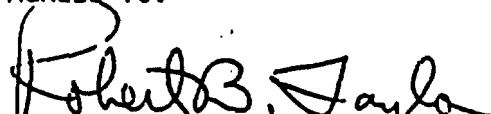
13) In the event that Mr. Garza accepts barter (trade) merchandise or services for use of air time on WTRU, Mr. Garza agrees to pay Mr. Taylor an amount equal to fifty percent (50%) of the retail value or fair market value of the barter merchandise or services, or Mr. Taylor may elect to accept fifty percent (50%) of the actual trade merchandise or services.

14) If Mr. Garza chooses to act as producer or co-producer of any promotion or event in which he has a financial interest, and the event has the potential to produce revenues and/or profits for Mr. Garza, and radio commercials or promotional announcements for the event are broadcast on WTRU, these announcements will be valued at fourteen dollars (\$14.00) each. Mr. Garza agrees to pay WTRU in advance for these commercials scheduled on WTRU.

15) If this agreement is cancelled by either party, each party agrees to pay any monies owed to the other party at the time of cancellation. Both parties agree to cooperate with each other to quietly and smoothly terminate mutual business matters within a reasonable period of time.

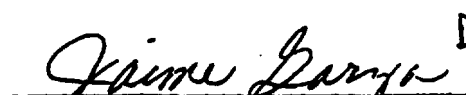
16) This contract is for no specific term and is terminable at will. The business arrangement described herein is not a partnership and is not a joint venture. Mr. Garza is an independent contractor, not an employee, and has no right to possession of the premises.

AGREED TO:


Robert B. Taylor dba WTRU

Date signed: JUNE 26, 1991

AGREED TO:

 DBA - AMIGOS
Jaime Garza LATINOS IN
RADIO INC.

Date signed: 6-26-91

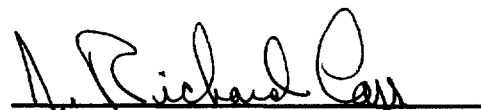
CERTIFICATE OF SERVICE

I, J. Richard Carr, hereby certify that copies of the foregoing TAYLOR OPPOSITION TO THIRD PETITION TO ENLARGE ISSUES were sent via first class mail, postage prepaid, or as otherwise indicated, to each of the following on this 25th day of August, 1992:

Hon. Walter Miller*
Administrative Law Judge
Federal Communications Commission
2000 L Street, NW
Washington, DC 20554

Norman Goldstein, Esq.*
Enforcement Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, NW
Suite 7212
Washington, DC 20554

Joseph A. Belisle
Leibowitz & Spencer
One S.E. Third Avenue
Suite 1450
Miami, Florida 33131
Counsel for Jupiter Broadcasting Corp.



J. Richard Carr

* By hand delivery